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American School
of Classical Studies
in Rome

THE TRIBUNAL AURELIUM

THE curved terrace at the back of the Rostra in the Roman Forum, between the Arch of Severus and the Temple of Saturni, has received various names, most often that of Graecostasis or Graecostadium. But this name is based on little solid proof, and is used with hesitation, if at all, by the latest writers, and I venture to suggest that the monument is something quite different.

Among the monuments in the Forum mentioned by ancient authors is the Tribunal Aurelium. Some writers, on account of a passage in Cicero,¹ have located this near the Temple of Castor. Cicero's words are: "Isdemque consulibus inspectantibus servorum dilectus habebatur pro tribunali Aurelio nomine collegiorum, cum vicatim homines conscriberentur, decuriarentur, ad vim, ad manus, ad caedem, ad direptionem incitarentur. Isdemque consulibus arma in templum Castoris palam comportabantur, gradus eiusdem templi tollebantur, armati homines forum et contiones tenebant." But, as Jordan² points out, it does not follow from the references that the tribunal was in that region. Most of those who have written on the subject have considered it a temporary wooden platform, although there is nothing to show that it was not a permanent structure of masonry.³ The word 'tribunal' seems to have been applied both to the raised platform on which the seat of the magistrate was placed, and to the whole space occupied by a court, the centre of which was the 'tribunal' of the presiding

¹ *Pro Sestio*, 15, 34.

² *Topographie der Stadt Rom*, I, 2, p. 405.

³ Cf. an inscription from Ostia, Orelli-Henzen, 3882: "tribunal in foro marmoreum fecit."

officer. Tribunals of the first kind, used by magistrates of various grades, were doubtless often small wooden platforms, while those of the second kind were sometimes permanent, as in the basilicas.

Although there is no direct evidence to prove that the curved terrace is the Tribunal Aurelium, the hypothesis that it is finds strong support and explains the form and position of a monument which hitherto has not been satisfactorily explained. Nichols¹ comes near to solving the problem when he says that the description of the tribunal in Asconius, quoted below, corresponds with no place so well as with the site of the curved terrace, and "the Tribunal Aurelium was built with a permanent platform and steps, which were probably of stone or marble; and the tribunal of the Comitium may have been similarly constructed,"² and again, "It is probable that, in earlier times, this end of the Comitium had been the site of the Praetor's tribunal."³ However, he concludes that the terrace is the Graecostadium of the later empire, and that the Tribunal Aurelium was near the Temple of Castor.

The tribunal received its name either from Gaius Aurelius Cotta, consul in 75 B.C., or from his brother, Marcus Aurelius Cotta, consul in 74 B.C. So far as the classical references are concerned, either date might answer. It seems more probable, however, that a suitable place for hearing law suits was provided by Gaius, a noted advocate and lawyer, who was prominent in public affairs long before his consulship, and proposed a number of laws concerning the powers of tribunes and concerning trials, than by Marcus, who is known to us chiefly from his connection with some unfortunate events in the provinces. It is to be noted that Cicero, the only ancient writer who mentions the tribunal by name, admired and praised Gaius and made him an interlocutor in the Brutus. These Cottas were uncles of Julius Caesar.

The passages bearing upon the question are :

Cic. *pro Sestio*, 15, 34, quoted above. It was spoken in 56 B.C., and refers to Piso and Gabinius, consuls in 58 B.C.

¹ *The Roman Forum*, p. 193.

² *Op. cit.* pp. 81, 195.

³ *Op. cit.* p. 185.

Cic. *in Pisonem*, 5, 11: "Pro Aurelio tribunali ne conivente quidem te, quod ipsum esset scelus, sed etiam hilarioribus oculis, quam solitus eras, intuente dilectus servorum habebatur ab eo, qui nihil sibi unquam nec facere nec pati turpe esse duxit." This was spoken in 55 B.C., and also referred to the same events in the year 58 B.C.

Cic. *de domo sua*, 21, 54: "Cum in tribunali Aurelio conscribebas palam non modo liberos, sed etiam servos ex omnibus vicis concitatos, vim tum videlicet non parabas," etc. This was spoken in 57 B.C. of the events of 58 B.C.

Cic. *pro Cluen.* 34, 93: "Gradus illi Aurelii tum novi quasi pro theatro illi iudicio aedificati videbantur; quos ubi accusator concitatis hominibus complerat, non modo dicendi ab reo, sed ne surgendi quidem potestas erat." This was spoken in 66 B.C., and referred to the condemnation of C. Junius in 74 B.C. Here *theatro* should be translated literally, 'Those Aurelian steps, at that time new, seemed built like a theatre for that trial.'

Cic. *pro Flac.* 28, 66: "Sequitur auri illa invidia Judaici. Hoc nimirum est illud, quod non longe a gradibus Aureliis haec causa dicitur. Ob hoc crimen hic locus abs te, Laeli, atque illa turba quaesita est; scis quanta sit manus, quanta concordia, quantum valeat in contionibus. Sic summissa voce agam, tantum ut iudices audiant; neque enim desunt, qui istos in me atque in optimum quemque incitent; quos ego, quo id facilius faciant, non adiuvalo." This oration was delivered in 59 B.C.

Asconius *in Milon.* 41 (148): "Primo die datus erat in Milonem testis C. Causinius Schola. . . . Quem cum interrogare Marcellus coepisset, tanto tumultu Clodianae multitudinis circumstantis exterritus est, ut vim ultimam timens in tribunal a Domitio reciperetur. Quam ob causam Marcellus et ipse Milo a Domitio praesidium imploraverunt. Sedebat eo tempore Cn. Pompeius ad aerarium perturbatusque erat eodem illo clamore: itaque Domitio promisit se postero die cum praesidio descensurum, idque fecit. Qua re territi Clodiani silentio verba testium per biduum audiri passi sunt. . . . Dimisso circa

horam decimam iudicio T. Munatius pro contione populum adhortatus est, ut postero die frequens adesset et elabi Milonem non pateretur iudiciumque et dolorem suum ostenderet euntibus ad tabellam ferendam. Postero die . . . clausae fuerunt tota urbe tabernae; praesidia in foro et circa omnis fori aditus Pompeius disposuit; ipse pro aerario ut pridie consedit saeptus delecta manu militum . . . Cicero cum inciperet dicere exceptus est acclamatione Clodianorum, qui se continere ne metu quidem circumstantium militum potuerunt. Itaque non ea qua solitus erat constantia dixit."

This explains the words of the orator addressed to Pompey (25, 67): "Non iam hoc Clodianum crimen timemus, sed tuas, Cn. Pompei (te enim appello, et ea voce, ut me exaudire possis) tuas, inquam, suspiciones perhorrescimus." The trial was held in 52 B.C.

It is fair to make the assumption, necessary to this argument, that the *Gradus Aurelii* were a part of the *Tribunal Aurelium*, because we learn from the only writer who calls them by name that the two existed at the same time, that the steps were part of some tribunal, and that on the occasions of which he speaks each was used by a crowd of men for an unlawful purpose. Writers on topography agree that they were the same. From the passages, then, it appears that this tribunal was important enough and permanent enough to receive a name, that it was in use at least sixteen years, perhaps twenty-two years, if it is of this that Asconius speaks, and that some part of it consisted of steps which reminded Cicero of a theatre.

In the so-called *Graecostasis* we find a monument which answers well to what we know of the *Tribunal Aurelium*. Although the south half of the wall and terrace has been rebuilt in late times, it is plain that it was originally built before the removal of the *Rostra*, or at least before the *Rostra* received its present form, which Hülsen attributes to Augustus, for it was almost completely hidden by the latter. The curved marble plinth, with its travertine support, was cut into by that of the *Rostra*, which passed on the outside.

The use of Porta Santa marble as facing for the outside does not exclude the possibility of a date as early as 44 B.C. The Romans must have been familiar with the use of colored marbles long before their first recorded use in Rome, for the Greeks used them for decoration as early as the fifth century B.C. The imitation of colored marbles in the wall paintings at Pompeii, some of which are of the second century B.C., indicates the early use of the marble itself. From Pliny we learn that the importation and use of colored marbles had begun more than a quarter of a century before 44 B.C. He is discussing the extravagant adornment of private houses, and mentions the use of marbles in public buildings only incidentally, although he says that the private practice followed the public.¹ About the year 92 B.C. the orator Crassus adorned his house on the Palatine with columns of Hymettian marble.² In 78 B.C. C. M. Lepidus first used Numidian marble in his house.³ In 74 B.C. L. Lucullus introduced the marble named after him.³ The first use of marble *crustae*, for facing the walls of a house, is accredited by Pliny,⁴ on the authority of Nepos, to Mamurra, a friend of Caesar.

In view of such testimony, and of the fact that only a few years later Rome was a city of marble, it is by no means improbable that the marble in question was put in place as early as 44 B.C. The thickness of the slabs points to an early period in the use of colored marbles. They are 0.08 m. or 0.09 m. thick. The metal pins, still visible in the marble facing, may have served to support documents which had to do with business transacted in the tribunal.⁵

During the month of December, 1899, the dirt and loose stones were cleared away from the inner part of the terrace, and there is now visible a short flight of travertine steps extending from the Umbilicus Romae to the centre, and following the

¹ *N.H.* XXXVI, 4-6.

³ *N.H.* XXXVI, 49.

² *Ibid.* XXXVI, 7.

⁴ *Ibid.* XXXVI, 48.

⁵ Cf. Suet. *Gram.* 17, "Statuam habet Praeneste, in superiore fori parte circa hemicyclium, in quo fastos a se ordinatos et marmoreo parieti incisos publicarat."

curve of the wall. They look very much like those of a theatre. Four are still in position, and one or two more are necessary to reach the top of the wall. The inner part is now an irregular floor of concrete from 1.5 m. to 2 m. below the top of the wall. Although the existing form of the steps may not be their original form, they could hardly have been much different. Their thickness is 0.28 m. Perhaps the original steps were thicker.

A satisfactory hypothesis must account for the curved form of this structure, and if we assume that these are the *Gradus Aurelii*, we have such an explanation. The wall and steps were given this curvature because it was a convenient form and one often used in enclosing the tribunals of basilicas and in theatres. The steps may have served as seats for the witnesses and privileged spectators. Cicero¹ says that the partisans of the accuser filled the steps and crowded about the defendant. In the trial of Milo, perhaps, they were occupied by the judges, who were fifty-one in number. At a later time they may have served as steps to the Rostra. The curved wall would have afforded a firm support for the honorary statues which were erected behind the Rostra.

It is strange that Caesar should have thought well to hide so finely constructed a monument, but he could hardly have found a better site for the Rostra, and the concealment of the exterior of a tribunal may well have seemed a trivial matter to him. Yet it is not out of place to note that in 77 B.C. Gaius Cotta successfully defended Cn. Dolabella against Caesar.² So that Caesar may have built it over with the Rostra in vindictive spirit.

It is possible that the Rostra, in its first form, did not conceal the tribunal so completely as it did later, and also, that the latter continued to be used for some time after the building of the Rostra.

Perhaps Cicero makes still another reference to the *Gradus Aurelii* when, in the year 57 B.C., he describes a meeting of the

¹ *Pro Cluen.* 34, 93.

² *Cic. Brut.* 92, 317, and *Val. Max.* 8, 9, 3.

senate held a short time before :¹ “Tum Clodius rogatus diem dicendo eximere coepit ; furebat a Racilio se contumaciter inurbaneque vexatum. Deinde eius operae repente a Graecostasi et gradibus clamorem satis magnum sustulerunt, opinor, in Q. Sextilium et amicos Milonis incitatae. Eo metu iniecto repente magna querimonia omnium discessimus.” The passages quoted above show that the Tribunal Aurelium was a meeting-place of the Clodian faction.

In conclusion, the so-called Graecostasis is a structure well adapted, by its theatre-like form, to the use of a tribunal ; it is in a part of the Forum where we might reasonably expect to find an important one ; it stands where such a tribunal existed, according to Asconius ; it resembles a theatre as did the Tribunal Aurelium, according to Cicero ; and its construction shows it to have been in use at about the same time as the Tribunal Aurelium. The fact that no mention is made of the tribunal after 52 B.C. is accounted for by its having become a part of the Rostra.

CHARLES JAMES O'CONNOR.

¹ *Ep. ad Qu. fr.* 2, 1, 3.